

**IN THE HIGH COURT FOR ZAMBIA
AT THE KITWE DISTRICT REGISTRY
HOLDEN AT KITWE
(CIVIL JURISDICTION)**

2011/HK/467

B E T W E E N:

POWERFLEX (Z) LIMITED

PLAINTIFF

AND

EFFICIENT FREIGHTERS (Z) LIMITED

DEFENDANT

**Before the Honourable Mrs Justice Judy Z. Mulongoti on the 13th
day of January, 2012**

For the Plaintiff : Mr. T. Chabu of Ellis & Co.

For the Defendant : Mr. C. Kaela of Katongo & Co.

R U L I N G

CASES REFERRED TO:

1. *VANGELATOS VS. VANGELATOS (2005) ZR 132*
2. *TAU CAPITAL PARTNERS INCORPORATION & ANOTHER VS. MUMENA MUSHINGE & OTHERS (2008) ZR 179 (HC)*
3. *NOTTINGHAM BUILDING SOCIETY VS. EURODYNAMICS SYSTEMS (1993) F.S.R. 468*
4. *MKUSHI CHRISTIAN FELLOWSHIP TRUST LIMITED (HOLD OUT AS CHENGELO SCHOOL) VS. HENRY MUSONDA APPEAL NO. 178 OF 2005 (UNREPORTED)*

LEGISLATION REFERRED TO

1. HIGH COURT RULES CAP 27
2. SUPREME COURT PRACTICE 1999 EDITION

The ruling relates to an application for a mandatory order of injunction on behalf of the plaintiff. The application was made pursuant to order 27 Rule 4 of the High Court Rules Cap 27 and editorial Note 29/L/1 of the Rules of the Supreme Court 1999 edition.

At the hearing, the learned counsel for the plaintiff relied on the affidavit in support sworn by one Chansa Chipili. Mr Chabu further submitted that a mandatory injunction be granted to the plaintiff on the ground that the defendant had not shown reasonable basis for holding on to the same. He argued that exhibits "CC1" to "CC4" of the affidavit in support shows that US Dollars 110,384 has been paid to the defendant, a fact which is acknowledged in paragraph 14 of the affidavit in opposition. According to learned counsel, the reason put forward in paragraph 16 is that the defendant was exercising a right to a lien by virtue of the alleged balance of US Dollars 3,167.75.

According to Mr. Chabu, it is improper and unreasonable to hold on to the container. Further that the allegation in paragraph 13 of the affidavit in opposition that Invoice No. 092 was amended and had no basis as there was no copy of the said invoice before Court. He has urged the Court to take note also of the Defence and Counterclaim in which the Defendant's claim was clearly for USD 3,167.75 whilst the container of spares it was holding on to is worth more than USD,150,000.00.

Learned counsel for the Defendant relied on the affidavit in opposition sworn by Chiko Mulenga and on the skeleton arguments.

Thus on the authority of **VANGELATOS VS. VANGELATOS (1)** and **TAU CAPITAL PARTNERS INCORPORATION & ANOTHER VS. MUMENA MUSHINGA & OTHERS (2)**, he argued that damages were an adequate remedy. According to Mr. Kaela, the plaintiff had not shown that it would suffer damages which can not be atoned for by damages. He urged the Court to dismiss the application with costs.

In response, Mr. Chabu submitted that the cases cited by the Respondent's counsel related to prohibitory injunctions and not mandatory ones. According to Mr. Chabu, the principles relating to prohibitory and mandatory injunctions are different.

I have considered the arguments and authorities submitted herein. I have also thoroughly perused Order 29/L/1 of the White Book.

According to Order 29/L/1 of the Supreme Court Practice 1999 edition which has also been cited by Mr. Chabu, the mandatory injunction is a very exceptional form of relief. It is granted in circumstances where the applicant's case is "*unusually strong and clear*". The principles to be applied were expounded in **NOTTINGHAM BUILDING SOCIETY VS. EURODYNAMICS SYSTEMS (3)**. In that case, Chadwick J, elucidated that the overriding consideration was: First which course is likely to involve the least risk of injustice if it turns out to be "*wrong*" in the sense of granting an interlocutory injunction to a party who fails to establish his

right at trial (or would fail if there was a trial) or alternatively, in failing to grant an injunction to a party who succeeds (or would succeed) at trial.

Secondly, the Court must keep in mind that an order which requires a party to take some positive step at an interlocutory stage may well carry a greater risk of injustice if it turns out to have been wrongly made than an order which merely prohibits action, thereby preserving the status quo.

Thirdly, it is legitimate where a mandatory injunction is sought to consider whether the Court does feel a high degree of assurance that the plaintiff will establish his right.

In the case of **MKUSHI CHRISTIAN FELLOWSHIP TRUST LIMITED (HOLD OUT AS CHENGELO SCHOOL) VS. HENRY MUSONDA (4)**, the Supreme Court observed that the learned trial Judge misdirected himself when he decided to grant an interlocutory mandatory injunction which had the effect of determining the substantive issue at interlocutory stage.

In the matter herein, the plaintiff's claim is for inter alia:

- (i) Damages for wrongful detention of the container of spares
- (ii) An order for delivery up of spares.

Further, there is also a dispute over invoice No. 092 apart from US3,167.75 which is undisputed.

Going by the cases of **NOTTINGHAM BUILDING SOCIETY AND EURODYNAMICS SYSTEMS** supra, and **MKUSHI CHRISTIAN FELLOWSHIP** supra, I opine that this is not a proper case in which a mandatory injunction should be granted.

For the foregoing, the application for a mandatory injunction is unsuccessful with costs to the defendant.

Leave to appeal is granted.

Dated the **13th** day of **January**, 2012

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Judy Z. Mulongoti
JUDGE